

Date: August 23, 1995 BQC-95-042
To: Nursing Homes NH 29
From: Judy Fryback, Director
Bureau of Quality Compliance
Subject: Short-Term Admission Agreements in Subacute Units

The Bureau of Quality Compliance has received questions regarding the acceptability of short-term admission agreements in nursing homes that have specialized Subacute units offering short-term subacute services. In some cases, facilities have created limited or short-term admission agreements that specify the number of days for stay in the facility. Questions relate to whether a resident may be involuntarily discharged once the number of days in the initial agreement have elapsed and the resident is not ready for discharge. The Wisconsin Administrative Code, s. HSS 132.70, permits admissions for short-term care; however, the federal regulations under CFR 483.12, Admission, Transfer and Discharge Rights, also apply to nursing homes that are certified as an SNF or NF. Several questions were submitted by the Bureau of Quality Compliance (BQC) to the federal Health Care Financing Administration (HCFA) for clarification. The questions asked and HCFA's responses follow:

Question #1: Are such time limited admission agreements permitted under OBRA (42 CFR 483.12)?

Response: Such agreements are not permitted under the federal regulations.

Question #2: Would the contract supersede the 42 CFR 483.12 reasons for discharge or be an acceptable reason for the facility to discharge the person at the end of the stated time limit?

Response: Such a contract does not supersede the regulations.

Question #3: Does the resident have the right to change his/her mind to extend the length of the agreement?

Response: A SNF or NF resident does not have the right to extend the length of such an agreement, since such agreements have no force in SNFs or NFs.

Question #4: Is the resident afforded the discharge protection under 42 CFR 483.12?

Response: Yes, a SNF or NF resident has the discharge protection afforded by the regulations.

Question #5: If the resident does not meet the 42 CFR 483.12 discharge criteria, but has signed an agreement for a short-term stay, may the facility discharge the resident, if the resident has continuing nursing need and does not wish to leave the facility?

Response: No, a SNF or NF may not discharge a resident if the regulatory discharge criteria are not met.

Because the federal requirements are more stringent than the state statutes, the Bureau of Quality Compliance will enforce the federal requirements. As a result, the discharge of a resident, because the time frames in the admission agreement have elapsed, would not be in compliance with the federal requirements, and applicable regulations would be reviewed by BQC surveyors. Deficiencies may result if such situations are discovered during surveys, complaint investigations, revisits, etc.

If you have further questions on this issue, feel free to contact your Regional Field Operations Director.

JF/JF/jh 95042.nm